in those events, or by covenant not to assign or underlet. Whichever form the restraint takes, an assignment in breach of the condition or covenant is not void. It is effectual to vest the term in the assignee, but the lessor can treat the assignment as a cause of forfeiture provided, in the case of a covenant against assignment, that it is accompanied by a proviso for re-entry."

I therefore hold that appellant having taken a valid assignment of the tenancy from Goh, the former tenant, who was not prohibited from doing so, was in lawful occupation of the premises.

The appeal is allowed and the judgment of the learned Magistrate set aside. The appellant will have the costs of this appeal and in the Court below, to be taxed.

Appeal allowed.

Solicitors: *Bannon & Bailey; S. M. Yong & Co.*

INDERJIT KAUR v. STATE ADVOCATE-GENERAL

[O. C. J. (Rose C.J.) September 2, 1959]

[Singapore — Suit No. 947 of 1959]

Immigration Ordinance (Cap. 102), s.7(1)(a) — Wife of a British Subject ordinarily resident in Malaya — Marriage contracted in India while one of the parties had a spouse living — Whether marriage contrary to Hindu Marriage Act, 1955 — Whether 2nd wife a person entitled to enter Singapore without Permit or Pass.

Sikh customary marriage — Marriage between a Sikh ordinarily resident in Malaya with a Sikh woman in India while he had a wife living — Whether parties are "two Hindus" to whom the Hindu Marriage Act, 1955 applies.

In this case the plaintiff went through a form of marriage according to Sikh customary law with one Bachan Singh at Brahmpore in India on May 22, 1958. At the time of the said marriage, Bachan Singh was already married to one Kartar Kaur, his principal wife. The plaintiff entered Singapore on February 22, 1959 and she contended that under section 7(1)(a) of the Immigration Ordinance as it then stood, she was entitled so to enter without having obtained a permit or pass by reason of the fact that she was the wife of a man who was a British Subject ordinarily resident in Malaya.

It was contended on behalf of the State Advocate General, that the plaintiff's marriage to Bachan Singh was not valid under the Hindu Marriage Act, 1955 in force in India.

Held: (1) marriages performed within any part of India except the State of Jammu and Kashmir are covered by the Hindu Marriage Act, 1955 if the parties (in the context of the present case) are Sikhs, wherever they are domiciled;

(2) any person who is a Sikh by religion within the meaning of section 2(1)(b) of the Act is subject to the provisions of the Act if he or she (wherever domiciled) goes through a form of marriage in any part of the territories to which the Act extends;

(3) as Brahmpore is in a part of India which is covered by the Act, the marriage which was purported to be performed on May 22, 1958 was invalid by reason of the fact that one of the parties, Bachan Singh, had a spouse living at the relevant time;

(4) the plaintiff, therefore, was unable to avail herself of the provisions of section 7(1) of the Immigration Ordinance as it stood at the relevant time. Her action therefore failed and must be dismissed with costs.

ACTION.

P. Coomaraswamy for the plaintiff.

Tara Singh (Crown Counsel) for the defendant.

Rose C.J.: On the 22nd of May, 1958 the plaintiff went through a form of marriage with one Bachan Singh at Brahmpore in India. I am satisfied from the evidence adduced that, so far as form is concerned, the ceremony complied with the requirements of Sikh customary law.

At the time of the said marriage it is common ground that the said Bachan Singh was already married by Sikh customary law to one Kartar Kaur, his principal wife.

The plaintiff entered what was then the Colony of Singapore on the 22nd of February 1959 and she contends that under the provisions of section 7 subsection (1)(a) of the Immigration Ordinance (Cap. 102), as it then stood, she was entitled so to enter without having obtained a permit or pass by reason of the fact that she was the wife of a man who was a British Subject ordinarily resident in Malaya.

It is not in dispute that Bachan Singh is a British Subject and a citizen of the United Kingdom and Colonies. Further, I am satisfied from the evidence adduced that he was "ordinarily resident" in Singapore within the meaning of section 2 of the Ordinance, as it appears that during the previous ten years he had resided in Singapore for all but a period of eleven months.

If, therefore, the marriage of the 22nd May 1958 was a valid marriage, the plaintiff would, in my view, be entitled to succeed. The question of the validity of the marriage must therefore now be examined.

Prior to the passing of the Hindu Marriage Act 1955 there can be no doubt that this marriage would have been regarded as a valid marriage It is common ground between the parties that the marriage is invalidated by the Hindu Marriage Act, if the parties are covered by it. Section 5 of the Act reads as follows:—

> "5. Conditions for a Hindu marriage. — A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—
> (i) neither party has a spouse living at the time of the marriage;".

Counsel for the plaintiff contends that the phrase "any two Hindus" means any two Hindus to whom the Act applies; and that the Act does not apply to a Hindu who is domiciled in some country outside India. He seeks support for his contention in the wording of section 1(2) of the Act which reads as follows:—

> "1 (2) It [The Act] extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories."

While the point is not without difficulty, I have come to the conclusion that the meaning of this subsection is that marriages performed

within any part of India except the State of Jammu and Kashmir are covered by the Act if the parties (in the context of the present case) are Sikhs, wherever they are domiciled. In my opinion no support is given to a contrary interpretation by the fact that the latter part of the subsection limits the operation of the Act in so far as Hindus who are outside India are concerned to those who are domiciled in the territories to which the Act extends. Similarly I am unable to agree that any inference favourable to the construction sought by the plaintiff can be drawn from section 2(1)(c) which seems to me to be merely intended to catch up any class of person who is not a Muslim, Christian, Parsi or Jew and who is not otherwise expressly covered by the Act. The fact that this particular part of the subsection is limited to such residuary persons or classes of persons as are domiciled in the territories to which the Act extends does not, in my opinion, necessarily lend support to the view that the generality of section 1(2) of the Act is in any way affected.

I have, for the reasons that I have given, come to the conclusion that any person who is a Sikh by religion within the meaning of section 2(1)(b) of the Act is subject to the provisions of the Act if he or she (wherever domiciled) goes through a form of marriage in any part of the territories to which the Act extends. That being so, as Brahmpore is in a part of India which is covered by the Act, the marriage which was purported to be performed on the 22nd May 1958 was, in my opinion, invalid by reason of the fact that one of the parties, Bachan Singh, had a spouse living at the relevant time.

The plaintiff, therefore, is in my opinion unable to avail herself of the provisions of section 7(1) of the Immigration Ordinance, as it stood at the relevant date. Her action therefore fails and is dismissed with costs.

Action dismissed.

Solicitors: *Braddell Bros.*

TAN KWANG CHIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Syed Sheh Barakbah J.) September 23, 1959]

[Alor Star—Kedah Criminal Appeal No. 40 of 1959]

Road Traffic — Learner driver — Expired provisional driving licence — Whether holder comes within category of person driving who "has been so permitted and is not disqualified..."

In this case the appellant was an "L" driver who was arrested and charged (1) for driving a car without a driving licence and (2) for driving the said car without being covered by 3rd party risk insurance policy. On his plea of guilty to both charges he was convicted and sentenced to a fine of $50 on each charge, and also disqualified from obtaining a driving licence for 12 months. He appealed on the ground that the owner of the car had in fact a policy of insurance covering 3rd party risks valid at the date of the alleged offence and that he was driving the said car with the owner's consent. These facts were not brought to the notice of the trial Magistrate. The appellant's provisional driving licence had expired some two days previous to the date of the arrest and the point at issue was whether he would still be covered by the policy which authorised *inter alia* any person driving with the insured's permission "provided that the person driving . . . has been so permitted (in accordance with the licensing or other laws . . . to drive) and is not disqualified by order of a Court of Law . . ."

Held: (1) had the facts of the policy been brought to the notice of the trial Magistrate he would not have accepted the appellant's plea of guilty on the 2nd charge;

(2) as the appellant was driving the car with the permission of the policy-holder he was within the category of person who "has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

Cases referred to:—

(1) *Mumford* v. *Hardy* [1956] 1 W.L.R. 163.

(2) *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199.

CRIMINAL APPEAL.

Lim Ewe Hock for the appellant.

Abdul Kadir bin Yusof (Federal Counsel) for the respondent.

Syed Sheh Barakbah J.: The appellant was an "L" driver of motor car No. P 8866 belonging to one Tan Eng Pow of Jalan Tunku Putra, Kulim.

On 22nd April 1959 he was arrested and charged (1) for driving the said car without a driving licence on the public road, an offence punishable under Regulation 13(4) of the Motor Vehicles Driving Offences Regulations, 1952, and (2) for driving the said car without being covered by 3rd party risk insurance policy, an offence punishable under Regulation 3(ii) of the Motor Vehicles Third Party Risks Regulation. He pleaded guilty to both charges and was convicted and sentenced to pay a fine of $50 on each charge. He was also disqualified from obtaining a driving licence for 12 months.

The appellant has now appealed to this Court to exercise its discretionary powers of revision in favour of the appellant on the 2nd charge on the ground that Tan Eng Pow, the owner of the car, had in fact a policy of insurance covering third party risks for the car which was valid from 1.5.58 until 30.4.59 and that the appellant was driving the said car with the owner's consent.

The above facts were not brought to the notice of the trial Magistrate. Had he known them, I have no doubt that he would not have accepted the appellant's plea of guilty on the 2nd charge. Be that as it may, the facts were brought before this Court by way of an affidavit filed by Mr. Anthony Louis Brend, the local Manager of the Union Assurance Society Limited, the insurer of the car and at the hearing the learned Deputy Public Prosecutor conceded the point that the car was driven with the owner's consent.

It appeared that the provisional driving licence of the appellant had expired some two days previous to the date of arrest and the point